IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1146 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIYAR SOLANKI & CO.

Versus

SANGHI NATHALAL ALLARAKHABHAI

Appearance:

MR A M Dagli for Mr YOGESH S LAKHANI for Petitioner

MR M C Bhatt with Mr MP PRAJAPATI for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/01/2001

ORAL JUDGEMENT

This is an appeal filed against the judgment and decree dated 5.11.1999 recorded by the learned 3rd Civil Judge (SD) at Rajkot in Special Civil Suit No.61/99, under which the learned Judge dismissed the said suit of

the appellant on the ground that the appellant-original plaintiff was not a duly registered partnership firm under the Indian Partnership Act, 1932.

2. Feeling aggrieved by the said judgment and decree of the trial court, the appellant has preferred this appeal before this court. It has been mainly contended here that the judgment and decree of the trial court are illegal, improper, unjust and without jurisdiction and against the provisions of law, against the legal settled position, circumstances, the evidence on record and against the authorities cited at bar and are unconstitutional and against the principles of natural justice. It has also been contended that the learned Judge, while passing the judgment and decree in question, has exceeded the jurisdiction vested in him. It is also submitted that the question which had arisen before the trial court for consideration was whether any unregistered partnership firm can file a suit and whether such suit is maintainable. That ultimately, the judgment and decree of the trial court are illegal, erroneous and deserve to be quashed and set aside.

3. The appellant, therefore, prays that the present appeal be allowed and the judgment and decree passed by the trial court be quashed and set aside and the suit of the appellant be decreed in terms of the relief prayed. At the admission stage, Mr M C Bhatt, learned Advocate appeared for the respondent. I have heard the learned Advocates for the parties and have perused the papers. It is an admitted position that the suit was filed by the appellant above named for specific performance of an agreement dated 1.8.1977 executed in favour of the present appellant. It is also an admitted position that the appellant is shown to be a partnership firm, and the appellant was not a duly registered partnership firm till the suit was finally disposed of. It is further an admitted position that till today, i.e. at the stage when the appeal is being heard, the firm has not been registered under the provisions of Indian Partnership Act, 1932, and therefore, it is not a duly registered partnership firm.

4. At the same time, it has been contended that the appellant has subsequently made an application for its registration and the said matter is in process. A question has arisen as to whether a suit filed by an unregistered partnership firm is maintainable ? The trial court has found that such a suit is not maintainable and therefore, the trial court dismissed the suit of the appellant on the ground that it is no a duly

registered partnership firm. Section 69 of the Indian Partnership Act, 1932 (for short, 'the Act') clearly shows that a suit by an unregistered partnership firm is not maintainable. It would be relevant to refer the said provisions of the Act as under:

"69 (1) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third-party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are, or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect -

(a) the enforcement of any right to sue for dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm or..."

On a bare reading of section 69 of the Act makes it clear that no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of firms as partners in the firm.

This means that the suit to enforce a right arising from a contract in favour of an unregistered partnership firm, is not maintainable.

5. Learned Advocate for the appellant is not in a position to argue that the aforesaid finding is illegal or incorrect. It is not his argument that a suit filed by an unregistered firm is maintainable. Therefore, it is quite clear that the suit was filed by an unregistered partnership firm. It is also clear that the contract was in favour of an unregistered partnership firm. Therefore, it cannot be said that the learned trial Judge has committed error or illegality in holding that the suit filed by the appellant-plaintiff is not maintainable

since it is not a duly registered partnership firm. Learned Advocate for the appellant has contended that a similar appeal has been admitted by the Division Bench of this Court on the aforesaid contention. For this purpose, he has referred to the proceedings of First Appeal No.3362/98. There also one of the contentions was that the plaintiff firm was not a registered partnership firm. The said appeal has been admitted and, therefore, the argument is that even this appeal should be admitted.

6. In fact, it is difficult to find out the reason as to why the said appeal has been admitted. It is not possible to ascertain if the factual aspects in both the matters are similar. Even otherwise, there is no reason to adopt the said order in this matter directly.

7. Learned Advocate for the appellant has referred to a decision in the case of Bir Bajrang Kumar v. State of Bihar (AIR 1987 SC 1345). There it has been observed that when two petitions involving identical points have been filed and one of them is admitted but the other is dismissed by the same High Court, then it gives rise to a clear possibility of contradictory judgments being rendered by the High Court in same case. I am of the view that it is not possible in this matter to hold, at this juncture, that the issues arising in the two matters are identical. Therefore, this decision will not apply on the facts of the case before me. It is again contended that in a decision of Raptakos Brett & Co.Ltd. v. Ganesh Property ((1998) SLP 472), the Supreme Court had an occasion to deal with the issue of unregistered partnership firm. There it has been observed that when the suit can be divided into two parts, and one of them can be decreed in absence of registration of the firm under the Act, then that part of the suit can be decreed and remaining part can be dismissed. In the present case, the suit has been filed on the basis of one contract, which is in favour of an unregistered partnership firm. Therefore, it cannot be divided into two parts. Therefore, there is no question of partly decreeing the suit of the appellant.

8. Learned Advocate for the appellant has vehemently further contended that after the aforesaid agreement of 1971 there was a second agreement in 1981 as contended in para 4 at page 5 of the plaint. The said part of the plaint says that another writing was executed on 17.2.1981 in favor of the appellant-original plaintiff. This shows that even the second agreement was in favour of the appellant-plaintiff. Therefore, even that part of the agreement cannot be technically and legally enforced

since the appellant is not a registered partnership firm. Therefore, this court is not in a position to partly decree and partly dismiss the suit as was done in the aforesaid case by the Supreme Court. Another contention raised by the learned Advocate for the appellant is that a subsequent suit on the same cause of action, after registration of the firm under the Act is maintainable. For this purpose, he has relied upon a decision in the case of M/s.Buhari Trading Co. v. M/s. Star Metal Co. (AIR 1983 Mad.150). There it has been observed that the dismissal of the suit which was sought to be withdrawn on the ground that the plaintiff therein was an unregistered firm, does not bar filing of fresh suit on the same cause of action after the firm gets itself registered, and for doing so, no permission is needed. This can be a relevant argument in a second suit, if any, filed by the appellant. This is not applicable to the facts of the present case.

9. Learned Advocate for the appellant has also relied upon a decision in the case of Atmuri Mahalakshmi v. Jagadeesh Traders (AIR 1990 AP 288. There it has been observed that the suit was filed by an unregistered partnership firm. The registration was made during the pendency of the suit. It was observed that the plaint already filed can be treated as a valid one from the date of registration of the firm. In the present case, the appellant firm was not registered till the disposal of the suit. Therefore, the said principle enunciated in the said decision will not apply on the facts of the present case. Learned Advocate for the appellant has further argued that the appeal is continuation of the suit and, therefore, the suit may be treated to be pending. Even if we take it that the suit is pending, even today, the appellant-plaintiff has not been registered in accordance with the provisions of the Act Therefore, this decision will not apply to the facts of the case before me.

10. It is then contended that instead of confirming the dismissal of the suit recorded by the trial court, this court should alter that order and direct that the plaint be rejected. It is not shown that the dismissal of the suit is illegal or invalid or wrongful. When the decree is passed by the trial court dismissing the suit, the same is not found or shown to be illegal or wrongful. Therefore, there is no reason to alter the said order as suggested and argued by the learned Advocate for the appellant.

10.1. In a decision in the case of Loonkaran Sethia v

Ivan E John (1977 SC 336), the ultimate decision was that the suit was ordered to be dismissed. In paras 33 and 34, it has been observed that there was bar of section 69 of the Act and, therefore, the suit was clearly untenable and had to be dismissed and the suit was ultimately ordered to be dismissed.

11. The facts giving rise to the present appeal go to show that the appellant was admittedly not a registered partnership and, therefore, the suit filed by the appellant-plaintiff before the trial court was clearly barred by provisions of section 69(2) of the Act. It therefore, cannot be said that the learned trial Judge has committed error in law in dismissing the suit of the appellant. In that view of the matter, when the suit has been rightly and properly dismissed by considering the legal aspects of the case, there is no reason to interfere with the said decree. There is no merit in this appeal and the same is required to be dismissed at the admission stage.

12. In the above view of he matter, this appeal is ordered to be dismissed with cost of the respondent. The judgment and decree of the trial court are confirmed. It is made clear that the trial court has disposed of the suit only on the ground that the appellant-plaintiff was not a duly registered partnership firm. This Court has also dealt with the said issue without entering into the factual aspects of the case.

18.1.2001 [D P Buch, J.]
msp.